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Subject:— Opinions under the Bombay Port Trusts Act 1879.

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Land Near Sassoon Dock.

The question raised for the R.L.A.'s consideration is about the title to the land near the Sassoon Dock. The Bombay Port Trust appears to lay claim to the land under the provision of paragraph 2 of the section 28 of the Bombay Port Trust Act, 1879. That provision provides :

> "The property vested by this section in the Board shall be deemed to include the estate, right, title and interest of the Crown in the rock, stones, shingle, gravel, sand or soil within the port, and also the right of levying dues on all goods landed at or shipped from any part of the foreshore between Malabar Point and Colaba Point."

This provision was considered by the Advocate General in his opinion No. 12 dated 5th March 1929. In that opinion he opined :

> "It is provided by section 28 of the Bombay Port Trust Act 1879 that all such immovable and other property as is held by or in trust for the trustees of the Port of Bombay under or in pursuance of or for the purposes of the Bombay Port Trust Act, 1873 (now repealed) shall, upon and after the date notified by the Governor in Council under section 8, vest in the Board. The property so vested in the Board includes the estate, right, title and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand and soil within the Port. The word 'Port' is defined as meaning the Port of Bombay limited within such limit as may from time to time be defined by the Government. See section 3 of the Act. Applying this definition the property vested in the Board under section 28 would include the right, title and interest of the Secretary of State in the rock, stones, etc., within the limits of the Port of Bombay as may from time to time be defined by the Government. But the limits of the Port of Bombay and the property of the Trustees are two entirely different things, because the property vested in the Trustees are those mentioned in Schedules B & C of the Bombay Port Trust Act No. I of 1873 which were transferred to the Board by section 28. Such property is to include the rock, stones, etc. and so it could not have been intended that such property should include the rock, stones, etc., unconnected with such property even if such rock, stones, etc., are within the limits of the port."

> "It seems therefore, from the context that the definition of the word "port" is not applicable to the word "port" as used in section 28. The Port Trust cannot claim all rocks stones, etc., within the limits of the Port of Bombay. They are entitled to such rocks, stones, etc., as are on the property vested in them. The limits of the Port may be high water mark as declared by the Trustees of the Port of Bombay but the limits would be for the purpose of

consequence only. The property of the Trustees would be what is vested in them including the reclamations, etc., of such property."

Emphasising the correctness of that opinion, the Advocate General in his opinion No. 80 of 1939 dated 19th August 1939 further opined :

"The words 'within the port' in section 28 are rather unfortunately used, but I think section 28 must read as follows :

'The property so vested in the Board includes the estate, right, title and interest of the Secretary of State for India in Council in the rocks, stones, shingle, gravel, sand or soil mmmkx connected with or relating to the property so vested and within the Port.'

In view of these opinions of the Advocate General, the contention of the Bombay Port Trust laying claim to the land in question is hardly tenable.

Under article 297 of the Constitution of India, all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union. It appears that under this provision the Central Government can claim the land in question only if it is found to be (1) underlying the ocean, and (2) within the territorial waters of India. The words "underlyin the ocean" may not present any difficulty, for underlying indicates submerging under the waters of the ocean. Territorial waters consists of waters contained in certain zone or belt called the maritime or the marginal belt which surrounds the State and thus includes a part of the waters in some of its bays, gulfs and straits." (See Oppenheim's International Law, page 416). "Here too, no unanimity exists as to the breadth of the belt or the point on the coast from which it is measured. Whereas the starting line is sometimes drawn along high-water mark, many writers drew it along low-water mark, other drew it along the depths where the waters cease to be navigable; other again along those depths where coast batteries can still be erected, and so on. But the number of those who

drew it along low-water mark is increasing. The Institute of International Law has voted in favour of this starting line, and many treaties stipulate the same." (Ibid page 325-446). It appears, therefore, clear that according to International Law the maritime belt starts from the low-water mark. (See also the Territorial Waters Jurisdiction Act, 1878, 41-42 Victoria Chapter 73). In the present case it is reported that the low-water mark at this place is presumably far beyond the eastern limit of the plot proposed to be leased to the B.B.& C.I. UNDERTAKING. But the Land Manager, Bombay Port Trust reports that "it is not clear if the whole area proposed to be reclaimed and leased is foreshore land or it extends beyond the low-water mark. If it does so, the Government of India would come into the picture." According to the Collector's report at page 23 ante, the land does not extend beyond the low-water mark but is within low-water mark. If the Collector's statement is correct, it appears that the Government of India has no right to the land. If necessary, this point may be further verified before a final decision is taken.

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Remembrancer of Legal Affairs.

M.R. to R.D., No. 13829; dated the 23rd August, 1952.

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